

JOSEPH T. MCNALLY
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
ALEXANDER L. FARRELL (Cal. Bar No. 335008)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-5557
Facsimile: (213) 894-7819
E-mail: Alexander.Farrell@usdoj.gov

Attorneys for Plaintiff
The United States of America

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID LITAKER,

Defendant.

No. CV 25-01156

COMPLAINT FOR CANCELLATION
OF CERTAIN INSTRUMENTS AND
TO QUIET TITLE

Plaintiff, the United States of America, on behalf of the United States Department of Housing and Urban Development (“HUD”), hereby alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action brought by the United States. This Court has subject matter jurisdiction over the claims in this action under 28 U.S.C. §§ 1345 (the United States as plaintiff) and 1331 (federal question). The Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, also supports the requested declaratory relief as detailed herein.

2. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b) because the property that is the subject of this action is situated in the district.

1 FEBRUARY 15, 1962 AS INSTRUMENT NO. 2926, OF OFFICIAL
2 RECORDS.

3 ALSO EXCEPTING ANY OILS, GAS, MINERALS AND OTHER
4 HYDROCARBON SUBSTANCES IN, UNDER AND/OR THAT MAY
5 BE PRODUCED FROM A DEPTH BELOW 500 FEET FROM THE
6 SURFACE OF SAID LAND OR PART THEREOF, NOT PREVIOUSLY
7 RESERVED IN DEED RECORDED FEBRUAR 15, 1962 AS
8 INSTRUMENT NO. 2926, OFFICIAL RECORDS AND IN DEED
9 RECORDED AUGUST 31, 1965 AS INSTRUMENT NO. 1876,
10 OFFICIAL

11 6. On or about December 3, 2020, HUD acquired actual title to the Property
12 by way of a Grant Deed-in-Lieu of Foreclosure (the “Deed-in-Lieu”). The Deed-in-Lieu
13 was granted to HUD in connection with its mortgage insurance and assignment of a
14 Home Equity Conversion Mortgage (“HECM”) commonly known as a reverse mortgage.
15 As a result of the Deed-in-Lieu, HUD owns the Property in fee simple. On or about
16 December 17, 2020, the Deed-in-Lieu was recorded in the Official Records of the
17 Recorder’s office for Los Angeles County. The Deed-in-Lieu is attached to this
18 Complaint as **Exhibit 1**.

19 7. The HECM insurance program through HUD is authorized by 12 U.S.C. §
20 1715z-20. HUD does not itself issue reverse mortgages, but instead has authority to
21 insure certain reverse mortgages that are independently contracted between homeowners
22 and private lenders. 12 U.S.C. § 1715z-20(c). “Congress, worried that [the risk posed by
23 non-recourse reverse mortgages] ...would deter lenders from entering the reverse
24 mortgage market, created a mortgage-insurance program, administered by [HUD], as an
25 incentive for lenders to provide reverse mortgages.” *Est. of Jones v. Live Well Fin., Inc.*,
26 2017 WL 4176661, at *1 (N.D. Ga. Sept. 20, 2017) (citing *Bennet v. Donovan*, 703 F.3d
27 582, 585 (D.C. Cir. 2013)). The HECM allows a borrower to borrow against the equity
28 in their home to receive periodic payments from a lender. *Welte v. Wells Fargo Bank*,

1 N.A., 189 F. Supp. 3d 965, 969-70 (C.D. Cal. 2016). The payments accrue as debt, which
2 becomes due and payable as a single payment upon certain conditions, including sale of
3 the home, non-occupancy of the borrower, or the death of the borrower. Lenders can
4 choose to assign the HECM to another mortgagee, 24 C.F.R. § 206.101(d), or to HUD,
5 *id.* § 206.107(a)(1).

6 8. Prior to HUD's title ownership of the Property, Barbara Montgomery ("Ms.
7 Montgomery"), as trustee of the Barbara Ann Montgomery Revocable Living Trust (the
8 "Montgomery Trust"), obtained the above-referenced HECM from lender Bank of
9 America, N.A., on or about February 5, 2010. On or about December 11, 2010, the Deed
10 of Trust was recorded against the Property to secure the HECM. The First Deed of Trust
11 is attached to this Complaint as **Exhibit 2**.

12 9. On or about September 4, 2012, the First Deed of Trust was assigned from
13 Bank of America, N.A. to Champion Mortgage Company, and was recorded on
14 September 14, 2012. The First Assignment of Deed of Trust is attached to this
15 Complaint as **Exhibit 3**.

16 10. On or about August 19, 2014, the First Deed of Trust was assigned from
17 Nationstar Mortgage (d/b/a Champion Mortgage Company) back to Bank of America,
18 N.A., and was recorded on August 27, 2014. The Second Assignment of Deed of Trust is
19 attached to this Complaint as **Exhibit 4**.

20 11. On or about November 6, 2014, the First Deed of Trust was assigned from
21 Bank of America, N.A. to HUD, and was recorded on December 22, 2014. The Third
22 Assignment of Deed of Trust is attached to this Complaint as **Exhibit 5**.

23 12. On or about April 12, 2020, Ms. Montgomery passed away. A redacted
24 copy of Ms. Montgomery's death certificate from the Los Angeles County Department
25 of Public Health is attached to this Complaint as **Exhibit 6**. Ms. Montgomery's death
26 made the payments due and payable under the First Deed of Trust. *See* Exhibit 2 ¶ 9
27 (a)(i) (Grounds for Acceleration of Debt).

28 13. On December 3, 2020, Mr. William Scott Montgomery, the successor

1 trustee of the Montgomery Trust, executed the Deed-in-Lieu of the Property to HUD in
2 order to satisfy HUD's debt. *See* Exhibit 1.

3 14. On August 24, 2022, approximately two years after HUD recorded the
4 Deed-in-Lieu, a Grant Deed was recorded by the Defendant against the Property, as
5 document number 20220844241 (the "First Litaker Deed"). The First Litaker Deed is
6 attached to this Complaint as **Exhibit 7**. The First Litaker Deed purports to grant the
7 Property from Ms. Montgomery to the Defendant, over a decade earlier, on **February**
8 **14, 2008**. *See* Exhibit 7. The First Litaker Deed does not state Ms. Montgomery was
9 acting in her capacity as the trustee of the Montgomery Trust. *See* Exhibit 7.

10 15. On November 4, 2022, approximately two years after HUD recorded the
11 Deed-in-Lieu, a Grant Deed was recorded by the Defendant against the Property, as
12 document number 20221048463 (the "Second Litaker Deed") (collectively with the
13 First, the "Litaker Deeds"). The Second Litaker Deed is attached to this Complaint as
14 **Exhibit 8**. The Second Litaker Deed also purports to grant the property from Ms.
15 Montgomery to the Defendant, over a decade earlier, on **February 14, 2008**. *See* Exhibit
16 8. The Second Litaker Deed does not state Ms. Montgomery was acting in her capacity
17 as the trustee of the Montgomery Trust. *See* Exhibit 8.

18 16. HUD had no actual or constructive notice of the Litaker Deeds because they
19 were recorded in the Official Records of Los Angeles County on August 24, 2022, and
20 on November 4, 2022, *after* HUD recorded the Deed-in-Lieu on December 17, 2020.

21 17. Conversely, Defendant had actual and constructive notice of the Deed-in-
22 Lieu because it was recorded *prior* to the Litaker Deeds.

23 18. As a result of the recording of the Litaker Deeds, HUD has been unable to
24 sell its lawfully owned property consistent with its mission to expand homeownership
25 opportunities, strengthen neighborhoods and communities, and ensure a maximum return
26 to the mortgage insurance funds. *See* 24 C.F.R. § 291.1(a)(2).

27 19. The United States has incurred costs in filing this action and in assessing the
28 injuries and damages.

FIRST CLAIM FOR RELIEF

Cancellation of Instruments and Declaratory Judgment

20. Plaintiff United States realleges the allegations contained in paragraphs 1 through 19 above.

21. The Court can declare that the Litaker Deeds are cancelled, and that the United States owns the Property free and clear of the Litaker Deeds, under the Declaratory Judgment Act. *See* 28 U.S.C. § 2201.

22. California state law forms the proper basis for the United States' cause of action for declaratory relief and cancellation of instruments under the Declaratory Judgment Act. The Declaratory Judgment Act "does not create new substantive rights, but merely expands the remedies available in federal courts." *Shell Gulf of Mexico, Inc. v. Center for Biological Diversity, Inc.*, 771 F.3d 632, 635 (9th Cir. 2014). The United States' substantive claim arises under California state law, as the United States seeks to cancel the Litaker Deeds under California's cancellation of instrument cause of action. *See* Cal. Civ. Code § 3412.

23. Section 3412 provides that "[a] written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." In order to successfully prosecute a claim for cancellation of an instrument, the plaintiff must plead and prove "(1) the instrument is void or voidable; and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position." *Thompson v. Ioane*, 11 Cal. App. 5th 1180, 1193–94 (2017). For cancellation, the "plaintiff must allege, inter alia, facts showing actual invalidity of the apparently valid instrument or piece of evidence." *Wolfe v. Lipsy*, 163 Cal. App. 3d 633, 638 (1985), disapproved on other grounds in *Droeger v. Friedman, Sloan & Ross*, 54 Cal.3d 26, 35–36 (1991).

24. The Litaker Deeds are void under California Civil Code Section 1214. Section 1214 states that prior conveyances of real property interests are void against

subsequent bona fide purchasers who record their title interest first. *See* Cal. Civ. Code § 1214; *In re Tippett*, 542 F.3d 684, 688 (9th Cir. 2008). Here, the Deed-in-Lieu is dated December 3, 2020, and recorded on December 17, 2020. The First and Second Litaker Deeds, by contrast, are each dated February 14, 2008, but were recorded 14 years later on August 24, 2022, and November 4, 2022, respectively. The United States did not have actual or constructive notice of the Litaker Deeds until they were recorded almost two years after the Deed-in-Lieu. Therefore, the Litaker Deeds are invalid or void.

25. The Litaker Deeds are causing injury to the United States. The United States is unable to sell the Property consistent with its mission to expand homeownership opportunities, strengthen neighborhoods and communities, and ensure a maximum return to the mortgage insurance funds. *See* 24 C.F.R. § 291.1(a)(2).

26. Therefore, the Court's consideration of a lawsuit to cancel the Litaker Deeds is appropriate under the Declaratory Judgment Act.

SECOND CLAIM FOR RELIEF

Quiet Title and Declaratory Judgment

27. Plaintiff United States realleges the allegations contained in paragraphs 1 through 26 above.

28. The Court can declare that the United States owns the Property free and clear of any cloud on title, including the Litaker Deeds, under the Declaratory Judgment Act. *See* 28 U.S.C. § 2201.

29. California state law forms the proper basis for the United States' cause of action for declaratory relief and quiet title under the Declaratory Judgment Act. The Declaratory Judgment Act "does not create new substantive rights, but merely expands the remedies available in federal courts." *Shell Gulf of Mexico, Inc.*, 771 F.3d at 635. The United States' substantive claim arises under California state law, as the United States seeks to remove a cloud on title to the Property under California's quiet title cause of action. *See* Cal. Code Civ. Proc. § 761.020.

30. The Litaker Deeds are void under California Civil Code Section 1214.

1 Section 1214 states that prior conveyances of real property interests are void against
 2 subsequent bona fide purchasers who record their title interest first. *See* Cal. Civ. Code §
 3 1214; *In re Tippett*, 542 F.3d 684, 688 (9th Cir. 2008). Here, the Deed-in-Lieu is dated
 4 December 3, 2020, and recorded on December 17, 2020. The Litaker Deeds, by contrast,
 5 are each dated February 14, 2008, but were recorded 14 years later on August 24, 2022,
 6 and November 4, 2022, respectively. The United States did not have actual or
 7 constructive notice of the Litaker Deeds until they were recorded almost two years after
 8 the Deed-in-Lieu. Therefore, the Litaker Deeds are invalid or void.

9 31. The Litaker Deeds are causing injury to the United States. The United
 10 States is unable to sell the Property consistent with its mission to expand homeownership
 11 opportunities, strengthen neighborhoods and communities, and ensure a maximum return
 12 to the mortgage insurance funds. *See* 24 C.F.R. § 291.1(a)(2).

13 32. Therefore, the Court's consideration of a suit to quiet title to the Property is
 14 appropriate under the Declaratory Judgment Act.

15 **PLAINTIFF THE UNITED STATES' PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff the United States of America prays for judgment as
 17 follows:

18 1. The judgment be entered for Plaintiff the United States of America and
 19 against Defendant David Litaker;

20 2. That the Court enter a final declaratory judgment canceling the First Litaker
 21 Deed, recorded as document number 20220844241;

22 3. That the Court enter a final declaratory judgment canceling the Second
 23 Litaker Deed, recorded as document number 20221048463;

24 4. That the Court enter a final declaratory judgment quieting title to the
 25 Property in favor of Plaintiff the United States of America, removing the cloud on title
 26 created by the Litaker Deeds, and finding that Defendant David Litaker has no
 27 ownership interest in the Property;

28 5. That Plaintiff the United States of America be awarded all costs and

1 disbursements associated with prosecuting this civil action; and

2 6. That Plaintiff the United States of America be awarded all other relief that
3 this Court deems appropriate.

4 Dated: February 11, 2025

Respectfully submitted,

5 JOSEPH T. MCNALLY

Acting United States Attorney

6 DAVID M. HARRIS

Assistant United States Attorney

7 Chief, Civil Division

8 JOANNE S. OSINOFF

Assistant United States Attorney

Chief, Complex and Defensive Litigation Section

9
10
11 /s/ Alexander Farrell

12 ALEXANDER L. FARRELL

Assistant United States Attorney

13
14 Attorneys for Plaintiff the United States of
America